

STATE OF NEW HAMPSHIRE
Department of Environmental Services
Water Council

RECEIVED

AUG 19 2005

05-15 WC

**NOTICE OF APPEAL OF DEPARTMENT OF ENVIRONMENTAL
SERVICES ADMINISTRATIVE ORDER NO. WD 05-023**

NOW COMES Sherwood Forest Manufactured Homes, Inc. ("Sherwood"), through its attorneys, Shaines & McEachern, P. A., and files the within Notice of Appeal of the Department of Environmental Services Administrative Order No. WD 05-023, dated July 20, 2005, pursuant to Env-WC 200, et seq., and in support states as follows:

1. Undersigned counsel represents the Appellant, Sherwood Forest Manufactured Homes, Inc., a New Hampshire Corporation having a principal address at 317 Sherwood Forest, Exeter, NH 03833.

2. Attached hereto, as Exhibit A, is a copy of Administrative Order No. WD 05-023, dated July 20, 2005, which cites the Appellant for violations of RSA 485-A:13, I (a) and RSA 458-A:8, II, based on findings that sewage overflows occurred from a manhole cover in the Appellant's sewer system on June 27, 2005, and July 4, 2005, which then traveled to a catch basin and from there discharged into the Exeter River, a Class B water.

3. At the outset, the Appellant acknowledges that the two discharge events did occur and has attached hereto copies of its letter to the Department dated July 8, 2005, and signed proposals for the preparation of a Sanitary Sewer System report by Jones & Beach Engineers, Inc. and for the reconstruction of its sewage lift station by Carmen Construction, Co., all of which evidence the Appellant's efforts to correct the condition which led to the discharges and to comply with the Commissioner's Order. See letter and proposals attached hereto as Exhibit B.

4. The purpose of this Appeal is to request that the Council reverse the Department's determination that the Appellant violated RSA 458-A:8, II. In support, the Appellant states that: (1) RSA 458-A:12, titled "Enforcement of Classifications," sets forth the legal test for whether a violation of RSA 458-A:8 has occurred and (2) that the Department's factual findings are insufficient, as a matter of law, to support a determination of violation under RSA 458-A:12.

5. In support of its determination that the Appellant violated the Classification Standards, the Department made the following findings:

8. Pursuant to RSA 485-A:8, II class B waters shall contain not more than 406 Escherichia coli per 100 millimeters [sic] in any one sample.
9. DES asserts that the sewage discharged from the two documented sewage overflow events contained bacteria in excess of 406 Escherichia coli per 100 millimeters [sic], based on typical characteristics of sewage.

See Order at Section C.

6. RSA 485-A:12, titled "Enforcement of Classification," defines what constitutes an unlawful violation of the Classification Standards and how that violation is to be enforced. RSA 485-A:12, I provides in pertinent part:

After adoption of a given classification for a stream, lake, pond, tidal water, or section of such water, the department shall enforce such classification by appropriate action in the courts of the state, and **it shall be unlawful for any person or persons to dispose of any sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the waters of the stream, lake, pond, tidal water, or section of such water below the minimum requirements of the adopted classification.** (Emphasis added.)

7. To constitute a violation of the Classification Standards, RSA 458-A:12, I requires a finding that the bacteria count in the Class B waters exceeds the applicable standard.

8. The predicate factual allegation the Department relied on to prove the violation is that the bacteria count *in the sewage* exceeded the allowed standard.

9. Because there was no finding that the Appellant's discharge caused the bacteria count in the Exeter River to exceed the Classification Standards, the Department's determination that the Appellant violated the Classification Standards was unsupported. Accordingly, the Department's determination that the Appellant violated RSA 358-A:8, II should be reversed.

10. RSA 485-A:12 further provides that violations of the Classification Standards are to be enforced in the courts of the State. Based on this requirement, the Appellant submits that any finding of a violation of the Classification Standards must be made by a court of law and not by the Department.

WHEREFORE, the Appellant respectfully requests that this Honorable Council:

A. Grant its Appeal and reverse the Department's determination that the Appellant violated RSA 458-A:8, II; and

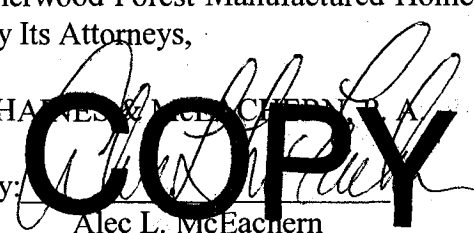
B. Grant such other and further relief as the Council may deem just.

Respectfully submitted,

Sherwood Forest Manufactured Homes, Inc.
By Its Attorneys,

SHAINES & MCEACHERN, P.A.

By:


Alec L. McEachern
NH Bar ID #: 10568
25 Maplewood Avenue
P. O. Box 360
Portsmouth, NH 03802-0360
(603) 436-3110

August 18, 2005

Certificate of Service

I certify that I have this 18th day of August 2005, forwarded a copy of the foregoing Notice of Appeal to the Director and the Commissioner of the Department of Environmental Services via First Class Mail, postage prepaid.

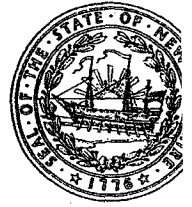
COPY


Alec L. McEachern

A



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

July 22, 2005

Sherwood Forest Manufactured Homes, Inc.
Attention: Daniel Britton, Vice President
317 Sherwood Forest
Exeter, NH 03833

Subject: Sherwood Forest Mobile Homes, Exeter, NH
Administrative Order No. WD 05-023

Dear Mr. Britton:

Enclosed you will find Administrative Order No. WD 05-023 for the subject site. If you have any questions about the Order or related matters, please contact me at 271-6637.

Sincerely,

Stergios K. Spanos
Compliance Subsection, Wastewater Engineering Bureau

CERIFIED MAIL / RRR # 7099 3400 0003 6154 3826

cc: Gretchen Hamel, Legal Unit Administrator
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Joy Hilton, EPA Compliance and Enforcement
John Bush, DES Wastewater Engineering Bureau Administrator
James Martin, Public Information Officer, DES PIP Office
Victoria Del Greco, Exeter Water & Wastewater Superintendent
Board of Selectmen, Exeter
Michael G. Britton, Registered Agent, Linden St., Box 317, Exeter, NH 03833
Elizabeth Bommer, Senior Property Manager, Sherwood Forest Manufactured Homes, Inc.

F:\WP\WEB\C&E\Exeter\SFMHP\AO05-023LOT.doc



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Sherwood Forest
Manufactured Homes, Inc.
Attention: Daniel Britton, Vice President
317 Sherwood Forest
Exeter, NH 03833

Re: Sherwood Forest Mobile Homes
Exeter, NH

ADMINISTRATIVE ORDER
NO. WD 05-023

July 20, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Sherwood Forest Manufactured Homes, Inc. pursuant to RSA 485-A:22. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Sherwood Forest Manufactured Homes, Inc. ("Sherwood Forest") is a New Hampshire corporation having a mailing address of 317 Sherwood Forest, Exeter, NH 03833.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401 - 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
2. Pursuant to RSA 485-A:8 and related sections, DES regulates attaining and maintaining specific standards of water quality to achieve the purposes of the legislative classification of surface waters of the State.
3. Sherwood Forest owns and operates the sewerage system (the "system") at the mobile home community in Exeter, NH known as Sherwood Forest Mobile Homes, and thus is responsible for the system and the sewage it conveys.
4. Pursuant to RSA 485-A:13, I(a) it shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from DES.

5. On June 27, 2005 the system had an overflow of sewage at the manhole on Lancelot Street. Sewage went into a catch basin on Lancelot Street by Powder Mill Bridge, at an estimated rate of 50 gallons per minute for one hour, and discharged to the Exeter River three miles upstream of the Exeter drinking water intake.
6. On July 4, 2005 the system had an overflow of sewage at the manhole on Lancelot Street at an estimated rate of 20 gallons per minute for one hour, and discharged to the Exeter River three miles upstream of the Exeter drinking water intake.
7. The Exeter River at the point of discharge for the two documented sewage overflow events (June 27, 2005 and July 4, 2005) is a class B surface water of the State, and furthermore, is the drinking water source for the Town of Exeter.
8. Pursuant to RSA 485-A:8,II class B waters shall contain not more than 406 Escherichia coli per 100 millimeters in any one sample.
9. DES asserts that the sewage discharged for the two documented sewage overflow events contained bacteria in excess of 406 Escherichia coli per 100 millimeters, based on typical characteristics of sewage.

D. DETERMINATION OF VIOLATIONS

1. Sherwood Forest has violated RSA 485-A:13,I(a) by discharging sewage to a surface water of the State without a written permit from DES.
2. Sherwood Forest has violated RSA 485-A:8,II by discharging sewage to a surface water of the State in excess of the surface water maximum for bacteria.

E. ORDER

Based on the above findings, DES hereby orders Sherwood Forest as follows:

1. **Within 90 days of receipt of this Order**, submit to DES a report prepared by a licensed professional engineer that investigates the cause(s) for the releases from the sewer system. The report is to evaluate the condition and adequacy of the sewer system and provide recommendations for actions to be taken to prevent recurrence of the releases along with a proposed implementation schedule to undertake the work necessary to ensure that the situation is remedied.
2. Within 15 days of acceptance of the implementation schedule, implement the recommendations per the approved schedule. The proposed schedule, with any necessary modifications, shall be incorporated into this Order and enforceable hereunder.

3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, as follows:

Stergios K. Spanos
DES Water Division
PO Box 95
Concord, NH 03302-0095

copy to: Joy Hilton
USEPA Region 1/Water Technical Unit
1 Congress St., Suite 1100
Boston, MA 02114-2023

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Sherwood Forest Manufactured Homes, Inc. of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Sherwood Forest Manufactured Homes, Inc. remains obligated to comply with all applicable requirements, in particular RSA 485-A:13 and related sections.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

COPY

Harry T. Stewart, P.E., Director
Water Division

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7099 3400 0003 6154 3826

cc: Gretchen R. Hamel, Legal Unit Administrator
James Martin, Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Joy Hilton, EPA Enforcement
Michael G. Britton, Registered Agent, Linden St., Box 317, Exeter, NH 03833
Elizabeth Bommer, Senior Property Manager, Sherwood Forest Manufactured Homes, Inc.
Victoria Del Greco, Exeter Water & Wastewater Superintendent

B

SHERWOOD FOREST MANUFACTURED HOMES, INC.

LINDEN STREET
EXETER, NEW HAMPSHIRE 03833

TELEPHONE (603) 772-5377 FACSIMILE (603) 772-2877

July 8, 2005

Mr. Stergios Spanos
Environmental Inspector
N.H. Department of Environmental Services
PO Box 95, 6 Hazen Drive
Concord, NH 03302-0095

Re: Sewer Overflow

Dear Mr. Spanos:

On June 27 our pumping station failed along with our alarm system. June 27 was a Monday. Our office is closed on Sunday and Monday. However, Joe Morey our resident emergency contact, immediately contacted Pete's Sewer Service and the Sherwood Forest property manager Elizabeth Bommer. Elizabeth Bommer immediately contacted Prescott Pump and David Sayers of Triad Mechanical of New Ipswich N.H.

Victoria DelCreco Superintendent of Exeter Water Department came to Sherwood Forest and reported to us that an undetermined amount of sewer water flowed on the street and into a catch basin.

Mr. Sayers came out along with people from Prescott Pump. Mr. Sayers temporarily fixed the problem and indicated to us that he had ordered a new part (flange) and that he would follow up with a permanent repair as soon as the new part came in which he said would be on Tuesday July 5. However, on July 4, at about 1 p.m. the Park again had a sewage overflow. Pete's Septic System was again contacted immediately; he arrived at about 2 p.m. and pumped out the sewer station. We were notified by the Town of Exeter that sewage had flowed into the catch basin and that the catch basin drained into the Exeter River.

We have now replaced one motor with a new motor and we have also repaired the leak in the other pump and repaired the alarm. At the current time the system is fully functional.

Nevertheless, at this time we are getting proposals from three separate contractors to completely replace this system. The contractors are 1. Mr. Les Carmin (603) 964-6543, 2. Maurice Michaud of Scott Construction Co., Inc Salem N.H. and 3. Perrin Prescott Prescott Pump, Exeter, N.H.

Our goal is to replace this system without delay so as to avoid all such future incidents.

We will keep you informed of our progress in that regard.

Sincerely,

Elizabeth Bonimer
COPY

Elizabeth Bonimer
Senior Property Manager

Daniel Britton
COPY

Daniel Britton
Vice President

c.c. Joy Hilton. Via. Fax # (617) 918-0877

JONES & BEACH ENGINEERS, INC.

85 Portsmouth Avenue
Post Office Box 219
Stratham, New Hampshire 03885

Telephone: (603) 772-4746
Fax: (603) 772-0227
Email: jbe@jonesandbeach.com

August 10, 2005

Sherwood Forest Manufactured Homes, Inc.
Attn. Mr. Daniel Britton, Vice President
317 Sherwood Forest
Exeter, NH 03833

**Re: Request for Professional Services
Proposed Sanitary Sewer System Report
Sherwood Forest Mobile Home Park
Linden Street, Exeter, NH
Tax Map 104, Lot 79**

Dear Mr. Britton:

Pursuant to your request for a proposal, Jones & Beach Engineers, Inc., is pleased to outline the cost estimate for professional engineering services for a Sanitary Sewer System Report of the Sherwood Forest Mobile Home Park located on Linden Street in Exeter, New Hampshire. This parcel consists of approximately 50 +/- acres. The intent of this proposal is to outline the work required to perform analysis of the existing sanitary sewer system and develop recommendations for improvements for submission to the NHDES Wastewater Engineering Bureau as noted below. This work will be performed on a time and materials basis to be invoiced monthly at our standard hourly rates.

SCOPE OF WORK

- 1. RESEARCH:** Engineering staff will research Town of Exeter and NHDES Wastewater Engineering files for the property sanitary sewer system, including the sewer pump stations. This work is necessary on your behalf to provide response to the NHDES Administrative Order No. WD 05-023, dated July 20, 2005. Item E requires that a report be prepared by a licensed professional engineer to investigate the causes of releases from the existing private sanitary sewer system, and to recommend actions to prevent recurrence. We feel that it is important throughout this fact-gathering task, that no conversation be made to speculate on the causes of the discharges, nor to offer any possible remediation. We are working directly on your behalf and you should approve of the release of information.

2. **EVALUATION AND ANALYSIS:** Working with Mr. Ladd Carmen of North Hampton, NH, as your Prime Contractor for Construction, our engineers will assess the causes for the two cited releases of overflow sewage from the site into the Exeter River, and to evaluate the condition and adequacy of the sewer system. We will consult with Mr. Carmen and Park Maintenance personnel to summarize existing sewer collection system and pump station maintenance procedures. Using this information and accepted engineering practice for wastewater systems, we will develop a set of recommendations. As you know, in relatively short order, Mr. Carmen has already verbally given us his summary and list of recommendations. It is important for Jones & Beach Engineers, Inc., to have full and complete access to all available records and plans as may exist in your possession to make as complete an evaluation as possible, including invoices and receipts for maintenance performed on this system. Water usage records will also be very helpful to assess flow requirements. It may be necessary to prepare an As-Built Plan of the sewer pump station.
3. **SANITARY SEWER SYSTEM REPORT:** After the evaluation is performed, we will prepare a written report to summarize the Park Sanitary Sewer System infrastructure, current maintenance procedures, and listing recommendations of any suggested improvements. We will utilize Mr. Carmen's construction expertise to provide estimated costs and schedule for implementation of recommendations, with several options (if possible) and subcontract price quotes for select items. Naturally, this report will be submitted to you in prefinal draft format before issue to any regulatory officials. We will be happy to meet with you to summarize progress, if requested. Following your review of the document and attachments, we will complete the final report and issue it as required to the regulatory officials.
4. **ENGINEERING REVIEW (Estimate):** This item includes JBE response and redesign to engineering review by Town's Engineer, Municipal Officials and State Agencies. We will consult with you during this process.
5. **CONSTRUCTION PHASE (Estimate):** We expect Mr. Carmen to be the Prime Contractor of the construction aspects of this project (although we also are qualified to oversee this work). Our staff will assist Ladd as necessary with shop drawing review and approval, and with periodic inspections during the course of the work. We will work with you to coordinate this phase. It is probable that the regulatory officials will require us to certify that the work has been completed strictly in accordance with the approved report.

Request for Professional Services***Page 3*****SERVICES NOT INCLUDED**

1. State and Local permit fees, deposits, recording fees & performance bonds.
2. Engineering Studies not specifically listed in this agreement.
3. Environmental Studies that may be requested by Regulatory Officials.
4. Major Redesign due to circumstances beyond our control.
5. Construction Specifications/Survey.
6. Offsite Survey/Engineering.
7. Geotechnical Borings and Engineering.
8. As-Built Survey and/or Design.

SCHEDULE

We anticipate beginning the Scope of Work immediately upon receiving the signed proposal and anticipate Draft Report submission to you within three to four weeks.

GENERAL CONDITIONS

The Owner agrees to limit the liability of Jones & Beach Engineers, Inc., such that their total aggregate liability shall not exceed total compensation for services under this proposal agreement.

BILLING/PAYMENT

The Owner agrees to make each payment due for incurred services and expenses within thirty (30) days from receipt of the invoice date, or be subject to a 1½% per month finance charge. The Owner shall also be liable for any legal expenses incurred in the collection of same.

ENGINEERING FEES

The fees for the aforementioned engineering services to be performed by Jones & Beach Engineers, Inc., will be billed at our standard hourly rates. For your budgeting purposes, the estimated fees for the Scope of Work is outlined below:

1. Research	\$ 2,200.00
2. Evaluation and Analysis.....	\$ 2,000.00
3. Sanitary Sewer System Report.....	\$ 1,300.00
4. Engineering Review (Estimate)	\$ 500.00
5. Construction Phase (Estimate).....	\$ 1,500.00
TOTAL ESTIMATED FEES.....	\$ 7,500.00

Request for Professional Services**Page 4****AUTHORIZATION**

The return of one signed original copy of this contract, along with a \$1,000.00 retainer, will be interpreted as your acceptance of this proposal. Acceptance of this proposal will be interpreted by Jones & Beach Engineers, Inc., as authorization to proceed with the above-described work. The terms of this contract proposal will be in effect for a period of thirty (30) days, after which JBE reserves the right to amend the contract terms as circumstances may have changed.

Very truly yours,

JONES & BEACH ENGINEERS, INC.
Jonathan S. King, PE
PresidentAPPROVED AND ACCEPTED this 11th day of August, 2005
Sherwood Forest Manufactured Homes, Inc.
Mr. Daniel Britton, VP

CARMEN CONSTRUCTION CO.

• General Contractor — Concrete Specialties •

122 WALNUT AVENUE

NORTH HAMPTON, NEW HAMPSHIRE 03862

PHONE 603/964-6543

Aug. 10, 2005

Sherwood Forest Mobil Homes
317 Sherwood Forest
Exeter, NH. 03833

Subject: Sherwood Forest Sewage Lift Station re-construction
(Equipment Renewal).

Dear Dan,

I am pleased to quote the following:

Scope of Work: Remove existing frame mounted self-priming pump and control panel & dispose. Furnish & install two new hydromatic frame mounted self-priming pumps. Adapt to existed 4" suction hoses. Remove existing 4" pvc check valves and replace with commercial grade cast iron flapper check valves. Furnish, install and wire a new duplex control panel. Furnish and install an auto-dialer exterior of the pump sta., next to the flow recorder. Start & test.

Total cost: \$47,400.00 (material, labor, electrical permit)

Terms: 1/2 deposit with receipt of signed proposal, balance on completion.

Completion: 4-6 weeks

Sincerely,

COPY

Accepted for Sherwood Forest

Name: Paul [Signature]

Date: 8/10/05

COPY